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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/643,178	08/18/2003	Frederick J. Diggle	BS030115 (03-BS018)	3646
7590	11/19/2004		EXAMINER	
Scott P. Zimmerman P.O. Box 3822 Cary, NC 27519			LEV, BRUCE ALLEN	
			ART UNIT	PAPER NUMBER
			3634	

DATE MAILED: 11/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/643,178	DIGGLE ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Bruce A. Lev	3634	(M)

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1)  Responsive to communication(s) filed on 18 August 2003.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

- 4)  Claim(s) 1-16 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) 10 is/are allowed.

6)  Claim(s) 1-9 and 11-16 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on 18 August 2003 is/are: a)  accepted or b)  objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)  All    b)  Some \* c)  None of:

  1.  Certified copies of the priority documents have been received.
  2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.

- 4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date.   .  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other:   .

U.S. Patent and Trademark Office  
PTOL-326 (Rev. 1-04)

## Office Action Summary

Part of Paper No./Mail Date 11122004

## DETAILED ACTION

### ***Claim Objections***

***Claims 4-7 are objected to*** because the phrase “comprise a...” should read “comprise the name of a”.

### ***Claim Rejections - 35 USC § 112***

***Claim 16 is rejected*** under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The phrase “A method comprising” needs to define the method, i.e., “A method of attaching a safety harness to a pole”.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

***Claims 1 and 11-13 are rejected*** under 35 U.S.C. 102(b) as being anticipated by ***Young 2,693,598.***

***Young sets forth*** a harness comprising a segment of elastic cordage 24 (not exceeding 3 feet); means for securing the first and second ends; wherein the cordage (made of rubber) stretches during a fall; a length adjuster including a loop (formed via members 29 and 30).

***Claims 1, 9, 11-13, and 16 are rejected*** under 35 U.S.C. 102(e) as being anticipated by ***Wilcox et al 2004/0140158.***

***Wilcox et al set forth*** harness comprising a segment of elastic cordage 34 (not exceeding 3 feet); means for securing the first and second ends; wherein the cordage stretches during a fall (discussed in paragraphs 40-43); a length adjuster (inclusive of member 24) including a loop; an indicator (viewed as the torn and elongated members along with member 59); and a method comprising donning a safety belt; ascending a pole/tree; securing the harness at both ends; wherein the harness stretches to decelerate during a fall.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

***Claims 2-8 are rejected*** under 35 U.S.C. 103(a) as being unpatentable over ***Young***.

***Young sets forth*** the harness, as advanced above, except for the indicia. However, the examiner takes the position that since indicia do not perform a mechanical function, these limitations are considered a ***design choice***.

***Claims 2-8 are rejected*** under 35 U.S.C. 103(a) as being unpatentable over ***Wilcox et al.***

***Wilcox et al set forth*** the harness, as advanced above, except for the indicia. However, the examiner takes the position that since indicia do not perform a mechanical function, these limitations are considered a ***design choice***.

***Claims 9 is rejected*** under 35 U.S.C. 103(a) as being unpatentable over ***Young*** ***in view of Bell 6,006,860.***

***Young sets forth*** the harness, as advanced above, except for the indicator, wherein the indicator tears when the cordage is stretched. However, ***Bell teaches*** the use of an indicator (inclusive of members 44) that tears when its cordage is stretched. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the harness of Young by including an indicator that tears when the cordage is stretched, as taught by Stevens, in order to provide means that indicate when the cordage has been stretched and no longer useful.

**Claims 14 and 15** are rejected under 35 U.S.C. **103(a)** as being unpatentable over **Young in view of Stevens 3,295,517**.

**Young sets forth** the harness, as advanced above, except for the adjuster including channels and a serrated surface. However, **Stevens teaches** the use of an adjuster 34 including channels and a serrated surface 36. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the adjuster of Young by including channels and a serrated surface, as taught by Stevens, in order to more easily and quickly change the length of the cordage.

#### ***Allowable Subject Matter***

##### ***Claim 10 is allowed.***

The following is a statement of reasons for the indication of allowable subject matter: structural limitations pertaining to an **indicator** that includes a **dye** that stains the torso harness, along with the previously set forth limitations is neither taught nor suggested by the prior art of record.

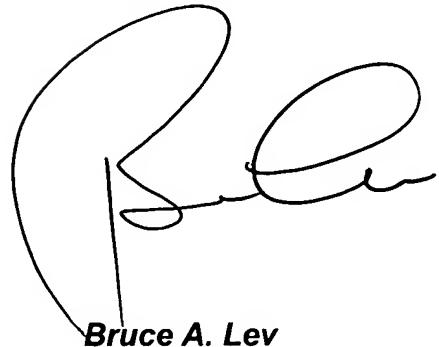
Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bruce A. Lev whose telephone number is (703) 308-7470.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-2168.

November 8, 2004



A handwritten signature in black ink, appearing to read "Bruce A. Lev". The signature is fluid and cursive, with a large, stylized 'B' and 'A' at the beginning.

***Primary Examiner***

***Group 3600***